

District of Quebec. In the Queen's Bench, October 1847.
No. 617. WURTELE et al. vs. BOSWELL.



As soon as the purchaser ascertains that the merchandize delivered do not answer the order given, he must return them to the vendor or give him notice to take them back; and if he neither returns them, or give the vendor notice, he cannot afterwards rest his defence upon the ground that the goods were quite unfit for the purpose for which he intended to use them.

Action in assumpsit for goods sold and delivered, and money paid, laid out and expended. The plaintiffs upon the order of the defendant who is a Brewer imported for him from London, "half a hundred weight of Book Isinglass fit for Brewer's use from 3s. 9d. to 5s. per pound, according to quality." The Isinglass was delivered in the month of October 1846, and a bill of parcels immediately handed to the defendant. In April following the defendant having been called upon to pay for the Isinglass refused to do so alleging it was of an inferior quality, unfit for the purposes of his trade, and offered to return the article: it was refused by the plaintiffs upon the ground that the notice of the unfitness of the goods and the tender to return were made too late.

The defendant pleaded to the action.-- 1st The general issue, and 2d a perpetual *exception péremptoire en droit* by which he urged, as a means of defence the fact above stated, that the article was of an inferior quality, and that within three days after its delivery he had notified the plaintiffs and offered to return the Isinglass. Issue having been joined, it appeared by the evidence that shortly after the delivery of the Isinglass in October, the defendant had tried it with the view of ascertaining if it would answer his purpose, that it was then ascertained that it would